

# United States District Court

WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA

v.

BYRON DWIGHT NUNLEY

## ORDER OF DETENTION PENDING REVOCATION HEARING

Case Number: 1:10-CR-368

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending revocation hearing in this case.

### Part I - Findings of Fact

- ☐ (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (state or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
- ☐ a crime of violence as defined in 18 U.S.C. §3156(a)(4).
- ☐ an offense for which the maximum sentence is life imprisonment or death.
- ☐ an offense for which the maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_
- ☐ a felony that was committed after the defendant had been convicted of two or more prior federal offenses described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- ☐ (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- ☐ (3) A period of not more than five years has elapsed since the (date of conviction) (release of the defendant from imprisonment) for the offense described in finding (1).
- ☐ (4) Findings Nos. (1), (2) and (3) establish a rebuttable presumption that no condition or combination of conditions will reasonably assure the safety of (an) other person(s) and the community. I further find that the defendant has not rebutted this presumption.

### Alternate Findings (A)

- ☐ (1) There is probable cause to believe that the defendant has committed an offense
- ☐ for which a maximum term of imprisonment of ten years or more is prescribed in \_\_\_\_\_
- ☐ under 18 U.S.C. §924(c).
- ☐ (2) The defendant has not rebutted the presumption established by finding 1 that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

### Alternate Findings (B)

- ☒ (1) There is a serious risk that the defendant will not appear.
- ☒ (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Defendant has had an ongoing problem with alcohol as reflected by the previous violations of his supervised release. See, for example, previous entries of September 18, 2013, April 28, 2014, November 17, 2014, and June 18, 2015.

On June 21, 2015, defendant was again charged with the use of alcohol (continued on attachment)

### Part II - Written Statement of Reasons for Detention

Defendant has failed to show by clear and convincing evidence that he meets the standards for release on bail. Defendant has an alcohol problem, which he either tends to conceal or to minimize. This and his failure to provide PBTs as directed make any supervision of him by the probation office problematic at best.

### Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: July 14, 2015

/s/ Hugh W. Brenneman, Jr.

*Signature of Judicial Officer*

Hugh W. Brenneman, Jr., United States Magistrate Judge

*Name and Title of Judicial Officer*

\*Insert as applicable: (a) Controlled Substances Act (21 U.S.C. §801 *et seq.*); (b) Controlled Substances Import and Export Act (21 U.S.C. §951 *et seq.*); or (c) Section 1 of Act of Sept. 15, 1980 (21 U.S.C. §955a).

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**Alternate Findings (B) - (continued)**

and being at a part of a festival area in Muskegon Heights designated for alcohol consumption in violation of the conditions of his supervised. Although he was seen there in the evening, he tested positive for alcohol the following morning, on June 22, 2015. The defendant repeatedly denied any use, however, attributing the positive finding to a broken testing machine. Eight days later he acknowledged that he had, in fact, been drinking beer on June 21<sup>st</sup>.

On June 29<sup>th</sup> and June 30, 2015, defendant failed to submit to a substance abuse test.

On July 8, 2015, defendant tested positive for alcohol while at KPEP. On July 4<sup>th</sup>, 5<sup>th</sup> and 7<sup>th</sup>, defendant also failed to appear for testing.